

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

PSM HOLDINGS, LLC,

Plaintiff,

V.

ADVENTURE AVENUE LLC, ERICA  
TRAMMELL, and LISA GILARDI,

Defendants.

## COMPLAINT

COMES NOW the Plaintiff, PSM HOLDINGS, LLC (“**PSM**”), by and through the undersigned counsel, and for its cause of action against ADVENTURE AVENUE LLC, ERICA TRAMMELL, and LISA GILARDI (collectively, “**Defendants**”), alleges as follows:

## PRELIMINARY STATEMENT

PSM is the owner of intellectual property that is used by PSM’s affiliates and their franchisees to operate a chain of educational play facilities under the name “Play Street Museum.” Play Street Museum locations are clean, upscale, and educationally focused children’s play facilities, targeted primarily to children eight and under, to provide entertainment in a stimulating learning environment of creative and dramatic play (“**PSM Locations**”). PSM and its affiliates have invested substantial time, creative effort, and resources to develop the unique Play Street Museum business model, the distinctive “look and feel” of the play facilities, the service marks and trade dress used in operating those facilities, and various copyrighted works.

Beginning in 2020, Defendants began operation of an educational play facility in Tulsa, Oklahoma under the name “Adventure Avenue.” Defendants’ “Adventure Avenue” business features operational and design elements which are confusingly similar, and in some cases

identical, to those of a PSM Location and PSM's operating methods. Defendants' business incorporates PSM's unique and distinctive trade dress in combination with the same educational activities, exhibits, and toys and other methods of operating that are part of the proprietary operating methods developed by PSM. PSM seeks to enjoin Defendants' infringement and misappropriation of PSM's intellectual property and proprietary operating methods and to recover damages, including attorneys' fees and costs, arising out of Defendants' conduct.

### **THE PARTIES**

1. PSM is a limited liability company formed under the laws of the State of Texas with its principal place of business in Plano, Texas.

2. Defendant Adventure Avenue LLC is a limited liability company formed under the laws of the State of Oklahoma with its principal place of business in Tulsa, Oklahoma.

3. Upon information and belief, Defendant Erica Trammell resides in Tulsa, Oklahoma and is an owner of Adventure Avenue LLC.

4. Upon information and belief, Defendant Lisa Gilardi resides in Tulsa, Oklahoma and is an owner of Adventure Avenue LLC.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 15 U.S.C. §§ 1114, 1116(a), 1117, 1121, and 1125(a), and 28 U.S.C. §§ 1331, 1338, and 1367(a).

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to PSM's claims occurred in this District and/or a substantial part of the property that is the subject of this action is situated in this District.

**THE PLAY STREET MUSEUM SYSTEM AND INTELLECTUAL PROPERTY**

7. PSM owns a number of marks, described below, registered with the United States Patent and Trademark Office (“**USPTO**”) and also has common law ownership rights in other service marks (collectively, the “**PSM Marks**”). The PSM Marks are valid and enforceable, and many of the federally registered PSM Marks are incontestable. PSM has also developed and promoted the original and recognizable PSM trade dress used in PSM Locations (the “**PSM Trade Dress**”), featuring design elements that amount to a highly distinctive overall impression. PSM’s affiliates and/or its franchisees currently own and operate educational PSM Locations in Texas, Colorado, Missouri, Arkansas, Illinois, Georgia, New York, Maryland, Washington, and Oregon under the PSM Marks and with the PSM Trade Dress.

8. Among the federally registered marks that PSM owns are the following:

<b><u>Mark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Reg. Date</u></b>	<b><u>Date of First Use</u></b>	<b><u>International Class/Services</u></b>
PLAY STREET	6538642	October 26, 2021	December 31, 2014	<p>[35] Retail store services featuring children’s toys, games, costumes, clothing, tents, books, calendars, maps, arts and crafts supplies and sets, hobby supplies and sets, chalk boards, dry erase boards, responsibility charts, and weather display boards</p> <p>[41] Educational and entertainment services for children, namely, providing interactive areas, instructional classes in the field of dramatic play and social gatherings for children; party planning consultation; providing children’s party centers for the purpose of</p>

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Date of First Use</u>	<u>International Class/Services</u>
				entertaining, educating, and developing children, and celebrating events
PLAY STREET MUSEUM	5098948	December 13, 2016	April 15, 2014	<p>[35] Retail store services featuring children's toys, games, costumes, clothing, tents, books, calendars, maps, arts and crafts supplies and sets, hobby supplies and sets, chalk boards, dry erase boards, responsibility charts, and weather display board; retail store services featuring packaged and prepared foods</p> <p>[41] Party planning consultation; providing children's party centers for the purpose of entertaining, educating, and developing children, and celebrating events.</p>
PLAY STREET MUSEUM	5180702	April 11, 2017	April 14, 2014	<p>[35] Retail store services featuring children's toys, games, costumes, clothing, tents, books, calendars, maps, arts and crafts supplies and sets, hobby supplies and sets, chalk boards, dry erase boards, responsibility charts, and weather display boards; retail store services featuring packaged and prepared foods</p> <p>[41] Educational and entertainment services for children, namely, providing interactive play areas, instructional classes in</p>

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Date of First Use</u>	<u>International Class/Services</u>
				the field of dramatic play and social gatherings for children; party planning consultation; providing children's party centers for the purpose of entertaining, educating, and developing children, and celebrating events.
PLAY STREET MUSEUM	4869574	December 15, 2015	June 30, 2014	[41] Educational and entertainment services for children, namely, providing interactive areas, instructional classes in the field of dramatic play and social gatherings for children; party planning consultation; providing children's party centers for the purpose of entertaining, educating, and developing children, and celebrating events

9. PSM also has applied with the USPTO to register the PSM Trade Dress. Attached hereto as **Exhibit A** is a copy of PSM's application, Ser. No. 98012816, for its distinctive store layout trade dress. In particular, PSM claims the following as distinctive elements of the PSM Trade Dress, having been in use since at least as early as 2014:

*The color(s) white, brown, black, indigo, grey, beige and green is/are claimed as a feature of the mark. The mark consists of the distinctive design and layout of a store with a retail area that is combined with a children's educational/entertainment space. The store features an entry area at the front featuring a white entry check-in kiosk with a white countertop and white retail shelving in a horseshoe pattern. The entry area is separated from a larger exhibit area by a black, child-sized slotted gate. In the exhibit area, along the side wall at the front is a grey framed chalkboard featuring interactive components, mounted above brown shelving. Further back along the same wall, there is a white buffet with a white rectangular backboard with four white child-sized rectangular tables and white benches perpendicular to the buffet. Child-sized, individual play building exhibits are oriented*

*around the three perimeter walls of the exhibit area. The walls, ceiling, trim, light fixtures, and exposed ductwork are all in white. The flooring is brown throughout the entire location with green carpet squares covering the center of the exhibit area and indigo, grey, and beige carpet squares located in the front area of the exhibit space. The elements that appear in dotted lines are not claimed as individual features of the mark; however the placement of the various items are considered to be part of the overall mark. The white within dotted lines represents background areas and is not part of the mark.*

10. PSM's original and recognizable trade dress, as further outlined below, has been in continuous use since June 2014, and is currently employed in eighteen (18) now-operating PSM Locations (and twelve (12) PSM Locations that are under construction or in development and soon to be open and operational), whether corporate-owned or owned and operated by one of PSM's twenty-five (25) franchise owners. The distinctive and recognizable PSM Trade Dress includes a unique combination of features and configuration of features used in PSM Locations, including but not limited to the following:

- a. a background of white walls, cabinetry, shelving, countertops, trim, and décor;
- b. open and exposed white ceilings with white structural features;
- c. windows along the front wall;
- d. an entryway with white shelving perpendicular to a white service counter;
- e. a slatted gate between the entryway shelving and service counter that swings open for entry to the play area;
- f. retail items on display in the entryway on white shelving;
- g. vinyl wood flooring;
- h. prominent checkerboard rugs/carpeting in two shades of green in the middle of the space;
- i. blue carpet flooring surrounding the play boat installation;
- j. white tables and benches;
- k. a custom, white buffet with built-in shelving, cabinets, and display board;
- l. galvanized stools with wooden tops;
- m. play buildings and structures that mimic real-life constructions;
- n. play vehicles and educational activities;
- o. take-home sensory kits; and
- p. wooden coins provided to each guest for "purchasing" snacks upon leaving.

11. In addition to the PSM Marks and the PSM Trade Dress, PSM has protectable copyrights in particular expressions of some of the features it has designed, as well as specifically

in some of the brochures and other printed literature it has developed and employs in its business. For example, PSM owns various copyrights in drawings of the layout of PSM Locations, as set forth in **Exhibit B and C**.

12. PSM has developed a unique and creative business model -- an “edutainment” concept providing superior quality play and educational experiences to young children and their families in an upscale, thematic, and interactive environment. PSM Locations offer public open play, private parties, special events, and classes as well as upscale retail space. The interior of a PSM Location is divided into specific sections – each different and providing the customer with a specific “job” or style of play. For example, a “bakery” with a mock kitchen that allows a child to pretend to cook, a “farm” with a model cow that allows a child to pretend to be a farmer, a model fire engine with fire fighter coats and helmets for children to wear and pretend to be fire fighters, and a doctor’s examination table with play medical supplies for children to pretend to receive medical treatments, among other things. There are several variants of PSM themed areas that are found in each Location – “Town Square,” “The Farm”, “Great Outdoors”, “Downtown,” and “On the Go”, each with a slightly different focus. The “Great Outdoors” variant has a wooden boat in the facility. Each PSM Location additionally provides children with wooden tokens as “coins” to use to “purchase” snacks in a specific area of the facility as they leave.

13. Other elements that further define PSM’s unique business model are its themed parties and events, each centered around the white buffet/white tables and benches area of the facility. Current party themes include: dinosaurs, mermaids, fire fighters, construction, unicorns, rockets/space, circus, donut shoppes, dancing/ballet, stars, race cars, farm, superheroes, teddy bears, trains, storybooks, animals, camping, and fishing.

14. These elements described above, combined with the PSM Marks, PSM Copyrights, and PSM Trade Dress, collectively comprise the wholly unique “**PSM System**.” PSM has spent countless hours and invested significantly over the past decade creating and refining distinctive environments that families love and enjoy together. PSM’s System is proprietary and PSM only provides the details of their system to its affiliates and their franchisees.

**DEFENDANTS’ UNAUTHORIZED USE OF THE PSM SYSTEM**


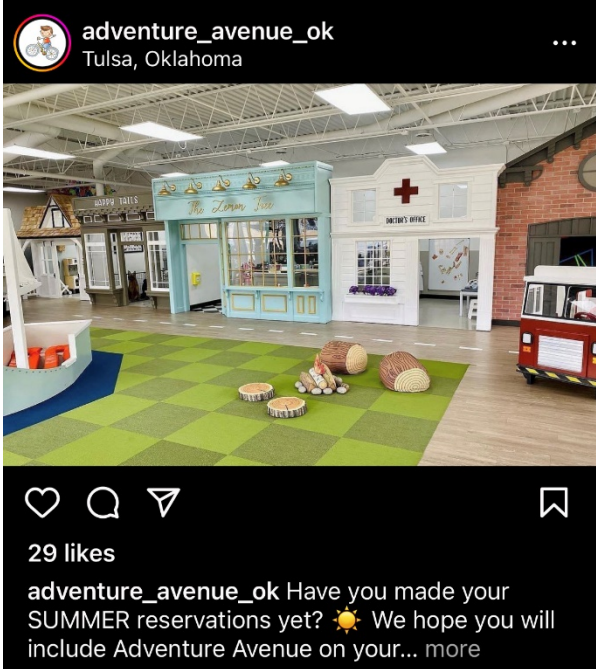
15. Sometime in late 2020, Defendants opened their “Adventure Avenue” business. Defendants’ business is a children’s play facility that is essentially identical to a PSM Location, as discussed in more detail below.

16. Prior to opening their business, in November 2019, Ms. Trammel and Ms. Gilardi contacted PSM via their website to request information about becoming a Play Street Museum franchisee and developing and opening a PSM Location.

17. Defendants were also well aware of PSM and PSM’s System when they were creating their copycat Adventure Avenue business. Indeed, Ms. Trammel and Ms. Gilardi admitted in a video feature on KJRH Channel 2 Tulsa in December 2020 that they visited play places in other cities to which their families had traveled and that Ms. Trammel and Ms. Gilardi’s “children were drawn to” facilities like the Adventure Avenue business they had opened. This reference is undoubtedly to Ms. Trammel and Ms. Gilardi visiting PSM Locations in other cities, particularly given their having contacted PSM in November of 2019 about opening a franchised PSM Location.

18. Defendants have copied the overall layout, design, and trade dress of PSM and PSM Locations. (Several examples are below and in Paragraph 19, with further examples reproduced in **Exhibit C**);



PSM Example	Adventure Avenue Example
	

19. Defendants have selected trade dress and operational elements from multiple of the PSM variants, including:



- Background of white walls, cabinetry (flat front tops and shaker cabinets below), shelving, countertops, trim and functional décor;
- open and exposed white ceilings with white structural features;

PSM Example	Adventure Avenue Example
	

- windows along the front wall;








PSM Example	Adventure Avenue Example
	

- white retail sales area at front of facility;
- vinyl wood flooring;

PSM Example	Adventure Avenue Example
	

- prominent checkerboard rugs/carpeting in two shades of green in the middle of the space;
- similar play buildings arranged around the green carpet;

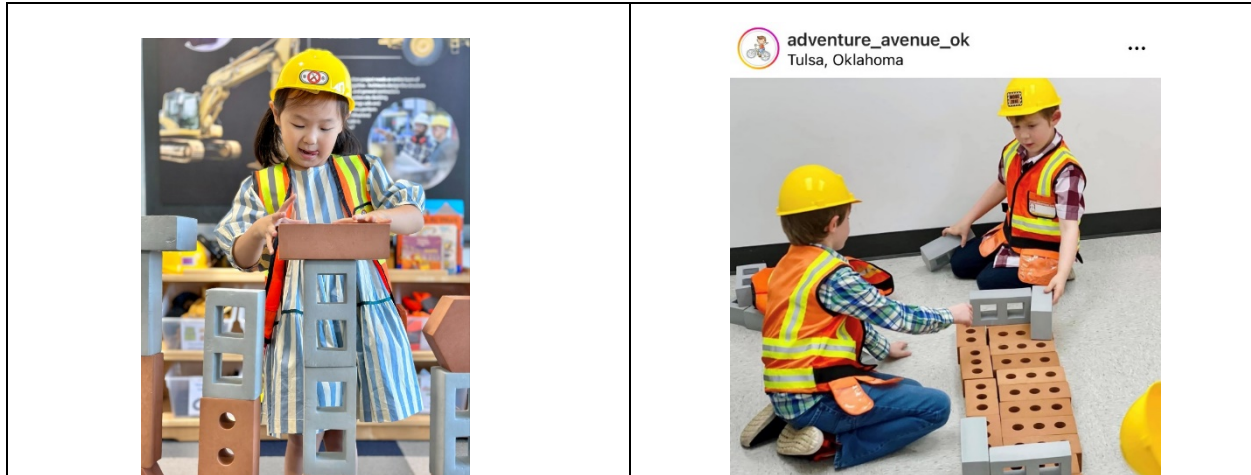


PSM Example	Adventure Avenue Example
 	
	
	

- identical exhibit and play components including a play fire engine vehicle, a wooden boat with fishing toys (also shown above), gear wall components, a light wall, wooden building blocks, and magnetic interactive toys;

PSM Example	Adventure Avenue Example
	
	
	








- similar galvanized stools with wooden tops;





- black capital lettering placed on wooden slats;

PSM Example	Adventure Avenue Example
	

- wooden coin with logo; and

PSM Example	Adventure Avenue Example
	

- numerous identical or near-identical toys, like the fire pit and construction blocks.

PSM Example	Adventure Avenue Example
	

20. From the perspective of operations and business interactions with clients, Defendants have copied PSM's business in at least the following ways:

- Re-staging of PSM advertising photos for use in their own advertising (several examples are above and copies of all of the re-staged photographs are reproduced in **Exhibit B**);
- use of reservation system to book sessions in advance;
- identical pricing of \$13 per play session; identical pricing structure for infants and older siblings to come for free; identical pricing structure for adults to come for free; identical pricing structure and savings with a 5-visit play pass:

PSM Example	Adventure Avenue Example
<p><b>EVENING AND WEEKEND PLAYTIME BY RESERVATIONS</b></p> <p>Evening and Weekend Playtime by Reservation (<b>reservation required</b>). Capacity is limited. Great time for families to come together, or if you just want to make sure your spot is reserved. Based on availability and must register in advance.</p> <p><b>\$13.00 for each child ages 1-8*.</b></p> <p>*children &lt;1 are free if accompanied by a paying sibling. Admission needs to be purchased in advance. Play passes can be used for Open Play and Open Play by Reservation and are great for gifts! They cannot be used for special events.</p> <p><b>We now offer a 5 Visit Pass for \$55! Valid for 1 year from date of purchase.</b></p>	<div data-bbox="938 1451 1279 1814"> <p><b>Admission</b></p> <p>Children ages 1-10 are \$13 (+tax) each          Infants with older siblings are FREE          Adults are FREE</p> <p><b>Adventure Play Passes</b>          5 Visit Child Pass \$55          (\$10 savings!)</p> <p><b>Adventure Avenue™</b>          Tulsa, OK          * RESERVATIONS REQUIRED *</p> </div>

- prominent use of “imagination” in headlines and purpose; prominent use of “learn through play” in headlines and copy;

PSM Example	Adventure Avenue Example
<p><b>A CHILDREN’S MUSEUM AND INDOOR PLAY AREA THAT LETS IMAGINATIONS WANDER</b></p> <p><i>Play Street Museum is an interactive children’s museum and indoor play area purposefully designed to encourage a young child’s sense of independence, exploration, and creativity.</i></p> <p>By narrowing the focus of our children’s museums and indoor play areas to the interests and imaginations of children eight and under, young explorers will discover educational exhibits and activities in a world specifically crafted just for them.</p> <p>Because of our deliberate and manageable scale, kids are able to self navigate throughout the children’s museum and indoor play area to engage deeply in activities about which they are most interested and passionate. This freedom reinforces independence in the child and also has the benefit of creating a more relaxed and accommodating museum experience for the caregiver.</p>	<p><b>Driving Imagination</b></p> <p>Adventure Avenue™ was created to drive imagination and provide a place for children to grow and learn through play. True play is open-ended and rich with infinite possibilities. It can help children build a bridge; enhancing their connection to the community and world around them.</p>

- identical business practice and promotion of “cleaning between sessions”;
- identical business practice of exchanging a token to be redeemed for a snack or drink per child; identical pricing for additional snacks per child;

PSM Example	Adventure Avenue Example
<p>Each child receives a wooden dollar with their admission to Play Street Museum. The wooden dollar can be redeemed for a drink or snack. Additional snacks can be purchased for \$1 each.</p>	<p>Can we bring in our own food or drink?</p> <p>With each full price children’s admission, Adventure Avenue is happy to supply one token, per child, that may be redeemed for a drink or snack. Additional snacks and/or drinks are \$1 each. All snacks and drinks must be consumed in the party area. No outside food is permitted in Adventure Avenue.</p>

- legal waiver system using almost exact wording;



## Play Street Museum

### Participation Agreement

#### ASSUMPTION OF RISK

You (which means the person whose signature appears on the bottom of this form) understand that there is a natural risk of injury, whether caused by Participant (which means any person on whose behalf You are signing this form) or someone else, in the use of or presence at Our (which means Play Street 2, LLC, the independent owner of the Play Street Museum Plano location) Play Street Museum location, the use of Our equipment and services, and participation in any Play Street Museum-related activities. These activities include but are not limited to, the use of any Play Street Museum toys, equipment, exhibits, or materials, and/or Play Street Museum events, private parties, community, school, or non-profit programs We host.

You understand that the risk of injury includes, but is not limited to any accidental or "slip and fall" injuries; and injuries or medical disorders (such as heart attacks, strokes, heart stress, head injuries, sprains, cuts, bruises, broken bones and torn muscles or ligaments) resulting from Your use of or presence at Our Play Street Museum location, Participant's use of equipment or services at Our Play Street Museum location, or Your or the Participant's participation in any Play Street Museum activities. You understand and voluntarily accept this risk on behalf of Participant.

You specifically acknowledge that, if you are not a parent or legal guardian of the Participant, that you have discussed the terms of this Agreement with the Participant's parent or legal guardian and have been given the authority by the Participant's parent or legal guardian to sign this Agreement on the Participant's behalf.

You understand that You must monitor the Participant at all times as the potential exists for there to be a choking hazard or other safety concern.

You approve the use of any pictures that may be taken at Our Play Street Museum location, in which the Participant is part of, to be used on any Play Street Museum website, social, or print media, and marketing advertisements.

## Play Street Museum

#### RELEASE OF LIABILITY

You specifically waive Your right and/or Participant's right to bring or take any action against Us and our owners, directors, employees, representatives, volunteers, affiliates, successors, or assigns as a result of any injury, loss, theft, or damage to You and/or Participant, including and without limitation, personal bodily or internal injury, exposure or harm due to COVID-19, economic loss or any other type of damage, regardless of whether resulting from Our negligence or anyone else using or present at Our Play Street Museum location.

You agree to defend, indemnify, and hold Us and our owners, directors, employees, representatives, volunteers, affiliates, successors, or assigns harmless against any claims arising out of the negligence or willful acts or omissions of You or Participant.

You agree to specifically assume all risk of loss, theft or damage of personal property for the Participant while he or she is present at Our Play Street Museum location, or participating in any Play Street Museum related activity.

I hereby certify that I have read and understand this entire Agreement and agree to and accept the terms and conditions of this agreement.

## Adventure Avenue

### AGREEMENT

#### Definitions:

Child means any person on whose behalf You are signing this form.

*Adventure Avenue* means any *Adventure Avenue* location, or any of its owners, directors, employees, representatives, volunteers, affiliates, successors, or assigns.

You or Your means the person whose signature appears on the bottom of this form.

#### ASSUMPTION OF RISK

You understand that there is a natural risk of injury, whether caused by Child or someone else, in the use of or presence at an *Adventure Avenue* location, the use of equipment and services at any *Adventure Avenue* location, and participation in any *Adventure Avenue* location related activities. These activities include but are not limited to, the use of any *Adventure Avenue* location toys, equipment, exhibits, or materials, and/or *Adventure Avenue* location events, private parties, community, school, or non-profit programs hosted by any *Adventure Avenue* location. You understand that the risk of injury includes, but is not limited to:

1. Injuries arising from the use of any *Adventure Avenue* location or equipment, including any accidental or "slip and fall" injuries; and
2. Injuries or medical disorders, including, but not limited, to heart attacks, strokes, heart stress, head injuries, sprains, cuts, bruises, broken bones and torn muscles or ligaments, resulting from Your use of or presence at an *Adventure Avenue* location, Child's use of equipment or services at an *Adventure Avenue* location, or Your participation in any *Adventure Avenue* activities;

You understand and voluntarily accept this risk on behalf of Child.

**You specifically acknowledge that, if you are not a parent or legal guardian of the Child, that you have discussed the terms of this Agreement with the Child's parent or legal guardian and have been given the authority by the Child's parent or legal guardian to sign this Agreement on the Child's behalf.**

You agree to specifically assume all risk of loss, theft or damage of personal property for the Child while he or she is present at any *Adventure Avenue* location or participating in any *Adventure Avenue* location related activity as defined above.

## Adventure Avenue

## RELEASE OF LIABILITY

You specifically waive Your right and/or Child's right to bring or take any action against *Adventure Avenue* as a result of any injury, loss, theft, or damage to You and/or Child, including and without limitation, personal bodily or internal injury, economic loss or any other type of damage resulting from the negligence of *Adventure Avenue* or anyone else using an *Adventure Avenue* facility.

You agree to defend, indemnify, and hold *Adventure Avenue* harmless against any claims arising out of the negligence or willful acts or omissions of You or Child.

## RIGHT TO REFUSE SERVICE

I understand that *Adventure Avenue* management may refuse the Child's participation in Activities for any reason, including, but not limited to:

- a. Failure by me or the Child to follow the *Adventure Avenue* rules;
- b. My failure to remain on the Premises during the Child's participation in the Activities;
- c. My failure to adequately supervise the Child or to ensure that the Child is adequately prepared for safe participation in the Activities;
- d. The Child's suffering from an illness or ailment of any kind that may impair his or her continued participation in the Activities or that may be contagious or potentially harmful to others on the Premises.

Furthermore, I understand that I need to monitor my child as the potential exists for there to be a choking hazard or other safety concern.

I approve the use of pictures taken at an *Adventure Avenue* location, in which the Child is part of, to be used on the *Adventure Avenue* website, social, or print media, and marketing advertisements.

I hereby certify that I have read and understand this entire Agreement and agree to and accept the terms and conditions of this entire application.

- similar FAQ copy regarding strollers in the facility; identical FAQ copy about the requirement of adults to attend with children and not being a drop off play facility or daycare, and same educational activities.

### **Play Street Museum Franchised Location Website FAQ**

#### **Frequently Asked Questions**

- Admission is \$13.00 per child ages 1-8. Older & younger children are free if accompanied by a paying sibling. Older children are welcome to play along but must play in a calm and respectful manner.
- Play Street Museum Cypress is offering Open Playtime Monday-Friday from 9am-5pm.
- Parents or guardians must sign a waiver for each child before entering the play space.
- Please note that we are not a drop-off center or childcare facility. Parents and caregivers must stay in the play space and supervise their children at all times.
- If at all possible, please do not bring strollers into Play Street Museum.
- Our restroom is outfitted with a baby changing station. Please change all diapers in the restroom.
- We have free WiFi!
- We do not allow food in the play area....be sure to fill up your little one's belly before you arrive.
- Outside drinks for children and adults are permitted and encouraged. Bring in your favorite drink and relax for a few!
- We reserve the right to ask children that are being disruptive to leave if they are interfering with the learning & play of others.

## Adventure Avenue Website FAQ

### FAQ

<p>How much is General Admission?</p> <p>General admission is \$13 per child. Infants with paying siblings are FREE. Adults are FREE and do not require a reservation.</p>	<p>How long can we stay?</p> <p>Play times will be in 2 hour increments with a cleaning session in between.</p>	<p>What is the age range of children to bring to Adventure Avenue?</p> <p>Adventure Avenue is a creative, true play facility for ages 0-100! While most of our costumes fit younger ages, Adventure Avenue has something for children ages 1-10.</p>
<p>What events can I hold at Adventure Avenue?</p> <p>At Adventure Avenue, we are equipped to help with birthday parties, baby showers, end of the year sporting events, play dates and much more! Email us today at <a href="mailto:erica@adventureavenue.com">erica@adventureavenue.com</a> to schedule your event or ask questions.</p>	<p>Does a parent/guardian need to be with my child(ren) at all times?</p> <p>Yes, parents and caregivers must accompany their child(ren) at all times. We are not a drop-off play facility or daycare and all adults are responsible for the well-being and behavior of the child(ren) they are responsible for.</p>	<p>Can we bring in our own food or drink?</p> <p>With each full price children's admission, Adventure Avenue is happy to supply one token, per child, that may be redeemed for a drink or snack. Additional snacks and/or drinks are \$1 each. All snacks and drinks must be consumed in the party area. No outside food is permitted in Adventure Avenue.</p>
<p>Are strollers allowed in your facility?</p> <p>Adventure Avenue is rich with play opportunities! Please keep strollers parked at the perimeter of our facility and out of the way to allow for easy exploration for our little friends!</p>	<p>Do I need to sign a liability waiver?</p> <p>Yes! As you enter our facility, parent or guardians must sign our waiver before play begins. To expedite the process you can fill out the waiver on our website.</p>	<p>Do I need a reservation?</p> <p>We are open for creative play Monday 10-2:30 and Tuesday through Saturday 10-5. However, you must make a reservation ahead of time to secure your spot.</p>
<p>Can I visit Adventure Avenue if I do not have a child with me?</p> <p>Adults who are not accompanied by a child will not be admitted to Adventure Avenue.</p>	<p>Is there a diaper changing area?</p> <p>Yes! Both of our restrooms are equipped with changing tables and bags to dispose of dirty diapers.</p>	<p>Are you open if the weather is bad?</p> <p>As a general rule, we are closed on the following: Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, Easter, Memorial Day, and Labor Day. In the case of inclement weather, we will follow the Jenks and Tulsa Public School system. If they are closed, we will also be closed.</p>

21. The elements described above together make up “the **Infringing Material.**”

### PSM’S DEMAND TO CEASE INFRINGEMENT

22. On September 8, 2023, PSM sent Defendants a letter (the “**Demand Letter**”) demanding that Defendants either immediately cease operating its facility in Tulsa, Oklahoma and/or immediately change its name and features and configuration of features in order to clearly

distinguish its business from PSM's business, Marks, Trade Dress, and Locations. A true and correct copy of the Demand Letter is attached to this Complaint as **Exhibit D**.

23. As of the filing of this complaint, Defendants have failed to provide proof of compliance with or written confirmation of plans to comply with the Demand Letter or to otherwise communicate with PSM about their plans to cease infringement of PSM's intellectual property and misappropriation of the PSM System.

**THE EFFECT OF DEFENDANTS' ACTIVITIES ON PSM AND THE CONSUMING PUBLIC**

24. Defendants' unauthorized use of the PSM System and the identical and confusingly similar Infringing Materials in the manner described above falsely indicates to the consuming public that Defendants' goods, services, and/or business activities are affiliated, connected, or associated with PSM, or that Defendants', services and/or business activities are sponsored, endorsed, or approved by PSM.

25. Defendants' unauthorized use of the PSM System and the identical and confusingly similar Infringing Materials in the manner described above is likely to cause confusion, mistake, and/or deceive customers and potential customers as to affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants' goods, services, and activities by PSM.

26. Defendants' unauthorized use of the PSM System and the identical and confusingly similar Infringing Materials in the manner described above enables Defendants to trade on and receive the benefit of goodwill in the PSM System, which PSM has built up with great labor and expense over many years. Defendants' unauthorized use also enables them to gain acceptance for their own goods, services, and/or business activities, not on their own merits, but on the reputation, goodwill, and know-how of PSM and the PSM System.

27. Defendants' unauthorized use of the PSM System and identical and confusingly similar Infringing Materials in the manner described above unjustly enriches Defendants at PSM's expense.

28. Defendants' unauthorized use of the PSM System and the identical and confusingly similar Infringing Materials in the manner described above deprives PSM of the ability to control the nature and quality of goods and services provided under the PSM System, Marks, and Trade Dress and places the valuable reputation and goodwill of PSM in the hands of Defendants, over whom PSM demonstrably has no control.

29. Upon information and belief, Defendants' acts complained of herein have been deliberate, willful, intentional, and in bad faith, with full knowledge and in conscious disregard of PSM's rights and with an intent to trade on PSM's goodwill in PSM's System.

30. PSM has been and continues to be damaged by Defendants' above-stated activities and conduct. Defendants have profited thereby and, unless enjoined, PSM's business, goodwill, and reputation, and that of the PSM franchise system will suffer irreparable injury, which cannot be adequately calculated or compensated solely by money damages.

31. Defendants' actions have caused actual, quantifiable harm. Specifically, a prospective franchisee in Oklahoma declined to pursue the opportunity to develop a franchised PSM Location based on the existence of Defendants' copycat "Adventure Avenue" business. Defendants' infringing facility, in short, has blocked PSM from expanding into a market into which it has been actively engaged in developing.

**COUNT ONE (Trade Dress Infringement)**

32. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

33. The PSM Trade Dress is nonfunctional, inherently distinctive and has acquired secondary meaning among the general consuming public through consistent use in PSM locations nationwide.

34. Defendants are willfully, intentionally, and knowingly using a design and design elements that are identical to, substantially indistinguishable from, or confusingly similar to the PSM Trade Dress.

35. Defendants' use of the PSM Trade Dress is likely to cause confusion, mistake, and/or deceive customers and potential customers of PSM at least as to an affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants' goods, services, and activities by PSM.

36. Defendants' conduct constitutes trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

38. In addition, Defendants' conduct is causing monetary damage to PSM as well as significant costs, including attorneys' fees, in amounts to be proven at trial.



**COUNT TWO (Federal Service Mark Infringement)**

39. PSM realleges the facts and allegation of the above paragraphs of this Complaint.

40. Defendants are willfully, intentionally, and knowingly using a providing a service with a mark – ADVENTURE AVENUE – that replaces each term of PLAY STREET with a synonym and thus is confusingly similar to the PSM Mark – PLAY STREET.

41. Defendants’ use of a confusingly similar trade name while offering similar services is likely to cause confusion, mistake, and/or deceive customers and potential customers of PSM at least as to an affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants’ goods, services, and activities by PSM.

42. Defendants’ conduct is causing irreparable injury to PSM’s reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

43. In addition, Defendants’ conduct is causing monetary damage to PSM as well as significant costs, including attorneys’ fees, in amounts to be proven at trial.

**COUNT THREE (Federal Unfair Competition)**

44. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

45. Defendants are willfully, intentionally, and knowingly using a design and design elements that are identical to, substantially indistinguishable from, or confusingly similar to the PSM Trade Dress.

46. Defendants’ use of the PSM Trade Dress and copying of the PSM System in operating their Adventure Avenue business is likely to cause confusion, mistake, and/or deceive customers and potential customers of PSM at least as to an affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants’ goods, services, and activities by PSM.

47. Defendants' unauthorized use of the PSM Trade Dress constitutes false designation of origin and unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

49. In addition, Defendants' conduct is causing monetary damage to PSM, as well as significant costs, including attorneys' fees, in amounts to be proven at trial.

**COUNT FOUR (Common Law Trade Dress Infringement)**

50. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

51. PSM's Trade Dress is nonfunctional, inherently distinctive, and has acquired secondary meaning among the general consuming public in Texas, Oklahoma, and throughout the United States through consistent use in PSM locations.

52. Defendants are willfully, intentionally, and knowingly using a design and design elements that are identical to, substantially indistinguishable from, or confusingly similar to the PSM Trade Dress.

53. Defendants' conduct constitutes trade dress infringement in violation of Texas and other states' common law.

54. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

55. In addition, Defendants' conduct is causing monetary damage to PSM in an amount to be proven at trial.



**COUNT FIVE (Common Law Deceptive Trade Practices)**

56. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

57. Defendants' use of the PSM Trade Dress is likely to cause confusion, mistake, and/or deceive customers and potential customers of PSM at least as to an affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants' goods, services, and activities by PSM.

58. Defendants' conduct constitutes deceptive trade practices in violation of Texas and other states' common law.

59. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

60. In addition, Defendants' conduct is causing monetary damage to PSM in an amount to be proven at trial.

**COUNT SIX (Texas Common Law Unfair Competition and Misappropriation)**

61. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

62. PSM has created the PSM System through their extensive time, labor, skills, and money.

63. Defendants, without the consent of PSM, have used and mimicked the PSM System to create their business and are engaging in direct competition with PSM, its affiliates, and their franchisees.

64. Defendants, without the consent of PSM, have used the PSM System in competition with PSM and have therefore gained a special advantage in that competition because Defendants

are burdened with none of the expense incurred by PSM in creating and maintaining the PSM System.

65. PSM has suffered commercial damage because of Defendants' actions and unauthorized use and replication of the PSM System.

66. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

67. In addition, Defendants' conduct is causing monetary damage to PSM in an amount to be proven at trial.

**COUNT SEVEN (Oklahoma Deceptive Trade Practices Act)**

68. PSM realleges the facts and allegations of the above paragraphs of this Complaint.

69. Defendants' use of the PSM Trade Dress is likely to cause confusion, mistake, and/or deceive customers and potential customers of PSM at least as to an affiliation, connection, or association of PSM with Defendants, or as to the origin, sponsorship, or approval of Defendants' goods, services, and activities by PSM.

70. Defendants' unauthorized use of the PSM Trade Dress constitutes false designation of origin and unfair competition in violation of the Oklahoma Deceptive Trade Practices Act, Okla. Stat. tit. 78, § 51.

71. Defendants' conduct is causing irreparable injury to PSM's reputation and goodwill, the PSM Trade Dress and the PSM franchise system, which injury will continue unabated unless enjoined by this Court.

72. In addition, Defendants' conduct is causing monetary damage to PSM, as well as significant costs, including attorneys' fees, in amounts to be proven at trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, PSM Holdings, LLC demands entry of judgment in its favor awarding the following relief:

1. Enjoining Defendants, and all those acting in concert or privity with any or all of them, including any of their agents, servants, employees, and attorneys, from:
  - a. using the PSM System, the Infringing Materials, or component elements thereof in the form currently used by Defendants or any form substantially similar thereto;
  - b. using the PSM System, the Infringing Materials, or any component thereof in any manner that so resembles the PSM System as to be likely to cause confusion, deception, or mistake;
  - c. engaging in any conduct that tends falsely to represent or is likely to confuse mislead, or deceive Defendants' customers or members of the consuming public to believe that Defendants are connected or affiliated with PSM or are sponsored, approved, or licensed by PSM;
  - d. further infringing the PSM System, Marks, and Trade Dress and damaging PSM's goodwill;
  - e. committing any other act that infringes the PSM System or that otherwise unfairly competes with PSM or the PSM franchise system; and
  - f. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs 1(a) through 1(e) above.
2. Ordering Defendants to remodel their Tulsa location (and any other location in which the Infringing Materials have been implemented or are being implemented) to remove the PSM System, the Infringing Materials, and all component elements;
3. Ordering Defendants to file with the Court and serve on counsel for PSM, within fifteen (15) calendar days after service of any injunction issued herein, a written report setting forth in detail, under oath, the manner and form in which it has complied with the injunction;

4. Awarding PSM all damages sustained as a result of Defendants' activities and trebling said damages pursuant to 15 U.S.C. § 1117, together with prejudgment and post-judgment interest;

5. Awarding PSM its reasonable attorneys' fees and its costs of this action as this is an exceptional case under 15 U.S.C. § 1117 and the court in exceptional cases may award reasonable attorney fees to the prevailing party; and

6. Such other and further relief as the Court may deem appropriate.

This 29th day of September, 2023.

/s/ Luke Motley, IV  
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